## IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,	) CASE NO. 8:07CR30	CASE NO. 8:07CR303
Plaintiff,	)	
vs.	) TENTATIVE FINDING	3S
HARRY C. LAMPERT, JR.,	)	
Defendant.	) )	

The Court has received the Revised Presentence Investigation Report ("PSR"), the parties' objections thereto (Filing Nos. 60, 61), and the Defendant's motion for downward variance (Filing No. 63). See "Order on Sentencing Schedule," ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The parties have objected to the quantity of controlled substance attributable to the Defendant in ¶ 32 and the base offense level 36. The plea agreement reached pursuant to Federal Rule of Criminal Procedure 11(c)(1)(b) recommends a base offense level of 34 based on a quantity of at least 1.5 but less than 5 kilograms of methamphetamine. The Court's tentative findings are that, absent unusual circumstances, the plea agreement should be upheld and the base offense level should be calculated as level 34.

The Defendant's motion for downward variance will be heard at sentencing.

IT IS ORDERED:

- The Court's tentative findings are that the parties' objections (Filing Nos. 60,
   to the PSR are granted;
- 2. The parties are notified that my tentative findings are that the PSR is correct in all other respects:

If **any** party wishes to challenge these tentative findings, the party shall file,

as soon as possible but in any event before sentencing, and serve upon opposing counsel and the court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the

law, and (c) if an evidentiary hearing is requested, a statement describing why an

evidentiary hearing is necessary and an estimated length of time for the hearing;

4. Absent submission of the information required by paragraph 3 of this order,

my tentative findings may become final;

5. Unless otherwise ordered, any motion challenging these tentative findings

shall be resolved at sentencing; and

6. The Defendant's motion for downward variance (Filing No. 63) will be heard

at sentencing.

3.

DATED this 7<sup>th</sup> day of July, 2008.

BY THE COURT:

s/Laurie Smith Camp United States District Judge